

By: Zaffirini

S.B. No. 2165

A BILL TO BE ENTITLED

AN ACT

relating to day habilitation services for individuals with an intellectual disability; imposing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 161, Human Resources Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. DAY HABILITATION REGISTRATION AND REGULATION

Sec. 161.401. DEFINITIONS. In this subchapter:

(1) "Day habilitation services" means services provided in a nonresidential setting to assist persons with intellectual and developmental disabilities in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in the community.

(2) "Day habilitation services provider" means a person who contracts with a community-based intellectual and developmental disabilities services provider or intermediate care facility to provide federally funded Medicaid day habilitation services authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

(3) "Medicaid waiver participant" means an individual who receives services through a Medicaid waiver program authorized under 42 U.S.C. Section 1369n(c).

(4) "Medicaid waiver program" means services under the state Medicaid home and community-based services waiver program for

1 persons with an intellectual disability adopted in accordance with  
2 42 U.S.C. Section 1369n(c).

3 (5) "Service planning team" means a group of persons  
4 convened to develop a plan of services and supports for a Medicaid  
5 waiver participant, including the participant, appropriate staff  
6 members and professional personnel, and other persons selected by  
7 the participant's legally authorized representative.

8 Sec. 161.402. COMMISSION REGISTRATION PROGRAM. (a) The  
9 executive commissioner by rule shall establish a registration  
10 process by which a day habilitation services provider may register  
11 with the commission if the provider demonstrates to the commission  
12 that the provider:

13 (1) follows safety guidelines and minimum service  
14 requirements established by the executive commissioner; and

15 (2) meets the minimum qualifications for a person or  
16 entity providing services to an individual participating in the  
17 consumer-directed service option under Section 531.051, Government  
18 Code.

19 (b) The guidelines established under Subsection (a) shall  
20 include a requirement that the setting and services provided by the  
21 day habilitation services provider meet the federal requirements  
22 established under 42 C.F.R. Sections 441.301(c)(4) and 441.530(a).

23 Sec. 161.403. DUTIES OF MEDICAID WAIVER PROGRAM PROVIDER.

24 (a) A Medicaid waiver program provider shall make a good faith  
25 effort to provide employment services or day habilitation services  
26 to a Medicaid waiver participant who wishes to participate in  
27 employment services or day habilitation.

1       (b) A Medicaid waiver program provider may not contract with  
2 a day habilitation services provider who provides day habilitation  
3 services to a Medicaid waiver participant as part of the Medicaid  
4 waiver program unless the provider is registered with the  
5 commission under Section 161.402.

6       (c) A Medicaid waiver program provider shall develop and  
7 implement a procedure by which a Medicaid waiver participant may  
8 pool Medicaid funds dedicated for day services with one or more  
9 other participants to pay for access to day services as a group.

10       (d) The commission may impose an administrative penalty  
11 against a Medicaid waiver program provider who violates this  
12 section.

13       Sec. 161.404. DUTY OF SERVICE PLANNING TEAM. A Medicaid  
14 waiver participant's service planning team shall inform the  
15 participant that employment services or day habilitation services  
16 are optional and the participant can choose to participate or not to  
17 participate in employment services or day habilitation services.

18       Sec. 161.405. CERTAIN LOCATIONS FOR DAY HABILITATION  
19 SERVICES PROHIBITED. A day habilitation services provider may not  
20 provide services at the same location as:

- 21               (1) a sheltered workshop; or  
22               (2) an employment setting in which participants are  
23 paid less than minimum wage.

24       Sec. 161.406. CERTAIN DAY HABILITATION SERVICES PROVIDERS  
25 PROHIBITED. An employer of record of a Medicaid waiver participant  
26 may not provide day habilitation services to the participant.

27       SECTION 2. Not later than December 1, 2017, the Health and

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1 Human Services Commission shall adopt rules required by Section  
2 161.402, Human Resources Code, as added by this Act.

3 SECTION 3. This Act takes effect September 1, 2017.